Sugden

Letter to John Williams

A

LETTER

TO

JOHN WILLIAMS, ESQ. M.P.

IN REPLY

TO HIS OBSERVATIONS UPON

THE ABUSES

OF

THE COURT OF CHANCERY.

BY

EDWARD B. SUGDEN, Esq.

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LETTER,

&c.

SIR,

AS a practising Barrister in the Court of Chancery, I may, I hope, be allowed to address a few cursory observations to you upon your last statements, which I have just read, in regard to the jurisdiction of that court, and the delays and abuses of which you complain. In the outset, I heartily rejoice to find that there are no abuses in the court where you practise. To that I may resort with pleasure when the Court of Chancery is swept away from amongst the cherished institutions of the country. There

I shall find *perfect* rules of evidence, no prolixity in pleading, no sham pleas or other dilatories, no hurried decisions at nisi prius slowly corrected in the court above, no jurisdiction assumed upon fictitious grounds. Justice is there administered at little cost, no doubt; and time, that great innovator, has only ripened the rules of that court into perfection, whilst it has corroded and withered the maxims of the Court of Chancery. It is not my intention to excuse any abuses of the Court of Chancery by recriminating upon the Court of King's Bench; but as you are ignorant of the rules of equity, and well informed of the rules of law, I am sure that you would first apply yourself to the correction of the abuses of the court in which you act, if there were any, before you ventured to approach the Court of Chancery.

I *know* that there are many defects in the practice of the Court of Chancery, which have crept in with time; and I *believe* there are not less in the courts of common law. I, who desire to practise with comfort what you call the trade of the law, but which I fondly believe is a science of a high

class and an honourable and a distinguished profession, wish that all abuses in all the courts should be remedied; and I think that they may be reformed without the courts being revolutionized. Reverence for the laws is the distinguishing feature of an Englishman's character, and his reverence is founded upon no idle superstition, but upon the well-founded confidence that the rules of law are adapted to the general institutions of the country, and are faithfully and uprightly administered by the Judges of the land. The law of a court of equity has now been administered for centuries, and, notwithstanding the mirth of Selden, depends upon the length of no man's foot, but is regulated by rules as binding and settled as the most fixed rule of common law. The property of thousands at this moment depends upon the decision of courts of equity, and the haste of the reformer cannot at once annihilate those courts. Reflect then calmly, I beseech you, upon the incalculable mischief which must be occasioned by inspiring the people of England with a belief, that the Court of Chancery "is a disgrace to the country;" "an odious dungeon, from which, when a man is once im-

mured in it, he seldom escapes without loss of comfort, fortune, and life." Will not such declarations from a gentleman of your station in life disgust the people with the general administration of the law? Can you believe, that at common law *right* succeeds so invariably, and at so little cost, that men will distinguish between the administration of the two jurisdictions? One great object in administering the law is to satisfy the failing party that justice has been duly dispensed. What man, who does not succeed in equity, will believe that the scales of justice have been held evenly, if your doctrines are to gain ground? And as frauds and breaches of trust are cognizable in equity only, we may expect long and loud complaints from all persons, whose frauds are exposed and punished, of the iniquity of the court which has exhibited their fraudulent conduct, and compelled them to refund their plunder. *They* will be your ardent disciples, for the common law could not reach *their* offences.

Your objection at this day to the rise of the jurisdiction of the Court of Chancery is somewhat amusing. Nearly all the commer-

cial law of the country has, to the great benefit of the people, been *created* by the Judges in the last half century.

The jurisdiction of equity was founded upon the confined views of the common law. The common law was so rigid that no such settlements could be made of property as prevail at this day. For these—and they are a real benefit to the country—we are indebted to courts of equity. The common law would not look at a trust, and therefore, if by any circumstance the legal title in my property became vested in another, he was absolutely entitled to it, and I was without a remedy. This remedy equity supplied, and in that followed strictly the civil law. If one had for a trifling consideration, obtained a conveyance from a son in his father's lifetime, of the family estate, there was no relief at law. Equity established it, and relieved against *frauds* generally, which the common law could not reach. If men had mutual dealings and long accounts depending between them, a court of law attempted to settle them, and an action of account might be brought: but the remedy was im-

perfect (as it still is in Scotland), because the court had no responsible officers before whom the accounts could be taken. Equity, with the assistance of it's masters, took such accounts satisfactorily, and no man now resorts to law although the right of action is not taken away. The like relief is given where the property of a deceased person is administered. You propose to abolish all this relief in courts of equity, but you cannot in this enlightened age, refuse to the people of England the remedies which I have noticed. Would you deny to them the improvements of ages, and confine them to the sort of justice to which alone they would be entitled if courts of equity were abolished. If you did, they would quickly require at your hands a restoration of the wholesome jurisdiction of those courts. Sons watching for their father's property, fraudulent purchasers, trustees, executors, would, no doubt, rapturously applaud your efforts! But as you complain of the division of the courts, you would, no doubt, *transfer* to the courts of common law the present jurisdiction of equity. *Juries* are the fit tribunal to decide questions of trust. intricate frauds depending on dark

and intangled transactions, matters of account, and the administration and marshalling of assets! But this is too ludicrous! Courts of equity sprung from the inability of courts of law to administer equitable relief; and now, that the jurisdiction and rules of equity are perfectly established, would you throw upon incompetent courts the jurisdiction in equitable cases? Whether it was originally desirable that the jurisdictions should have been divided is not the question, but whether now, that both jurisdictions are defined and ascertained by known boundaries, they should be blended? No man who understands the bearing of the question would venture to attempt the task. If you did blend them, or if you established a new jurisdiction, you would be compelled to have new courts and additional judges, *who must first learn* the present rules of equity, or now establish better than the successive experience of ages—of Bacon, Nottingham, Hardwicke, Thurlow, Eldon, *assisted in all times by the Judges of England*—have given to us: you would supply them doubtless with masters, or clerks, or accountants, or call them what you please, to investigate the

accounts and matters, which from their nature cannot be settled at a heat—like a sweepstakes—but require much time to investigate. When all this is accomplished what will the nation gain ?

Probably, after making yourself master of the present rules of equity, you would remodel the code for your new courts. I do not stop to correct your errors as to injunctions, because every one knows they cannot be obtained in the way you mention. If the remedy is at law, and the defendant has recourse to *equity*, the question is "*not torn from a jury*," because the resort to equity admits the legal right to be clear, but upon equitable grounds asks relief. In such cases, if the plaintiff at law answer in time (and *you* would surely not have the time which is allowed to answer enlarged) no injunction can go *unless upon merits confessed in the answer*; and where the injunction is not against proceedings at law, the bill must be verified by affidavit, and even then the matter is not decided in the absence of the other party, unless in cases where delay would operate instant and irremediable mischief—

as where a man is about to cut down the timber upon an estate without having a right to it.

You seem to think that a man guilty of a fraud, may defend himself in equity against all summary proceeding at law. But the rule is precisely the reverse. You instance the case where executors have 100,000*l.* assets, and there are no debts, and yet a legatee of 1,000*l.* cannot have a summary remedy in so plain a case. What do you propose? To pay the legacy before you ascertain whether there are any *debts* to pay; or would you *assume* that no man who leaves 100,000*l.* can be indebted within a 1,000*l.* of that amount? Or would you consider it satisfactory, that the legatee knows of no debts? Can you point out a more perfect system than that which is now established? The *executor* is not allowed to commit any fraud. He is compelled to deposit the 100,000*l.* in the Bank of England, ready to answer the demands of the parties really entitled to it, and the master advertizes for creditors to come in by a day named.

You complain of the usurped jurisdiction of equity, and yet make a grave charge against it, because it does not allow a trial at law upon a will of *personal* estate. Equity refrained from so doing, because the Ecclesiastical Court had the *sole* jurisdiction, but as to real estate, over which no such jurisdiction prevailed, equity did resort to a jury, as it always does upon disputed facts of importance, for equity delights to follow the law. What then becomes of *this* ground of charge.

The law of real property too, according to your temperate and dignified mode of discussing the law of the land, is utterly disgraceful to the country, and affords matter of perfect sarcasm, ridicule and disgust to those who understand it and see how it is managed; but as they are the happy chosen few—six, I think you state—they may be allowed to laugh at that by which they live. You appear to be surprised, that a man may form a judgment of a horse which he buys, but that he cannot of the title to an estate. Would you try a long and complicated title like a horse cause? Do you propose to re-model

the law of real property? Whom would you employ? Not the chosen six who alone comprehend it surely! I have studied the law of real property, the page of which is open to all. Its rules are clear, precise, and well established, and founded upon the learning and experience of ages, and have (if I may be allowed the expression) from time to time accommodated themselves to the varying changes of property occasioned by the influx of commerce and wealth. Their *application* is frequently attended with difficulty, because in this free country every man can dispose of his estate as he pleases, and wealthy men delight in making complicated settlements and wills—unwilling in death to relinquish their grasp over their property. Would you restrain this power? If not, what would new rules avail? It is stated, that in a particular case, an abstract of a title extended over eight hundred sheets. I can truly state, that in my former practice I never saw an abstract of any thing like that length. What does such a singular case prove, but that the owners had often changed, or had frequently mortgaged or settled the estate? Could you restrain their power?

But let these laws stand upon their own merits, what is the charge against the Courts of Equity. They are *legal* rules, and *followed* as such in equity. The ground, indeed, upon which you introduce your objections to the law of real property, is, that " it is one of the sources out of which the Court of Chancery is fed, because it is the doubts thrown upon the titles of land that filled its insatiate maw with so many dainty morsels— because it leads to the filing of those special bills for specific performance (to use the slang of the Court of Chancery) which occasions such delightful pickings for the Chancery lawyers."

These are well chosen terms, I admit, for a temperate discussion of the jurisdiction of the highest court of the kingdom. But let them pass, and I will join issue with you upon the jurisdiction itself, in cases I must be allowed to call them of specific performance, till your wisdom furnishes us with better terms. The jurisdiction of equity in the case of specific performance, is at once the most ancient and useful branch of its jurisdiction. It compelsthe parties literally to perform their

agreement. What is the objection to this? One man agrees to sell or settle an estate, and another to buy or give a consideration for it. Why should they not perform their agreement? If there were no court of equity, the seller, for example, of an estate might refuse to convey it to the purchaser, although he was ready to pay for it, and would merely be liable to such damages as a jury might think proper to give. This would encourage men to break their solemn contracts, instead of literally performing them. The jurisdiction of equity in these cases, has accustomed men for ages to look on both sides for the literal performance of such contracts, and has mainly contributed to the character for fair dealing which Englishmen enjoy; and equity never interferes, unless where the object of the contracting party cannot be accomplished by the substitution of a similar subject with that contracted to be sold. If equity did not interfere, and a man were to purchase an estate, he could not be sure that he should obtain it until it was actually conveyed to him, so that he might die in the uncertainty whether he had the estate to leave by his will or not, although the seller had a good title to

it. So if a man before his marriage were to agree to settle his estate upon his wife and issue, at law he would be liable only to damages, and might refuse to make the settlement. This would in many such cases lead to distressing actions between a father and his wife and children. But equity prevents the necessity of such actions, and compels the father to settle the estate itself according to his agreement. Such a jurisdiction is founded upon the soundest principles. If every man of property in England were polled upon this point, I am satisfied that the votes would be greatly in favour of the rule as now established.

I have now considered your objections to the jurisdiction of the court, and the principles upon which it is guided.

You then complain of delay, and suppose that the cases now before the court cannot be decided in a less period than forty years from this time. You appear to be entirely ignorant of the number of causes, petitions, &c. which are respectively decided annually upon an average; and you choose to assume, that every

petition will require the same period to decide as a heavy cause involving many abstruse points of law, and the consideration of evidence, whereas forty or fifty petitions (and I am not speaking of consent petitions) are frequently disposed of at a single sitting; and frequently at a sitting, from fifteen to thirty, and more short causes, are heard and disposed of; many of them involving the decision of points of law of considerable nicety. Where as in an action at law, the property in dispute depends upon a single question, a decision may, and constantly is, obtained upon it in equity as quickly as at law. Not above fifty of the causes which were set down for hearing as late as Hilary Term 1824, remain for an original hearing before the Vice-Chancellor; and nearly all the original causes at the Rolls (where the pressure is not so great) have been heard up to Trinity Term 1824. It has been publicly stated that an amicable suit in Chancery lasted for thirty-three years. If the circumstances were stated, it would, no doubt, appear that the very object of the suit was to secure the fund in court. It constantly happens, where there are infants enti-

tled to personal property, that their relations do not choose to trust to the honesty of individuals, or are desirous to guard against their deaths, or other accidents; and, therefore, file a bill for the express purpose of the fund being secured in court, until the infant attains twenty-one; and it sometimes happens, that before that time arrives, by intervening accidents, over which the court has no control, other persons become entitled to the fund, and the court cannot distribute it until their rights are ascertained. In such cases, therefore, the court is censured for accomplishing the very object for which alone the suit was instituted.

A gentleman of great eminence in the mercantile world has stated, as a grievance, a case in which, upon the advice of his solicitor, he sacrificed 500*l.* rather than go into a court of equity, as his costs, if he succeeded, would exceed that sum in amount. If this is meant as a statement that every successful party in equity has 500*l.* costs to pay, of course it is altogether fallacious. I have some reason to believe, that in the case alluded to, very heavy accounts must have been investigated to ascertain the amount of the sum

due, which circumstance led in effect to a compromise. The law besides was, I believe, against the claim of the gentleman referred to, for whoever buys a bond, takes subject to the account between the original debtor and creditor. Observe the *equity* of the claimant: *A.* holds a bond from *B.* for 4,500*l.* *A.* deposits it with *C.* to secure the like sum, and *C.* does not inquire from *B.* what is owing on the bond, and when he finds that *B.* has already paid 500*l.* to *A.* thinks himself unjustly treated, because *B.* will not pay that 500 *l.* over again. The same gentleman alluded to another case, where a matter of business had been converted by the *defendant* into a suit in Chancery, that had lasted twenty-three years, when a gentleman named (like Sir Charles Grandison, for such tales have not even the recommendation of novelty,) sat down to unravel the accounts, and in three hours put into order that which the Court of Chancery had failed to do in twenty-three years! And it is upon statements like these that the people of England are no longer to have equitable relief administered to them.

Even in cases of accounts, and the like,

time is necessarily consumed in examining the accounts, which in many cases extend over many years. How would delay be avoided, by abolishing courts of equity, and referring the matter to a new tribunal? Would you approve of Mr. Ellice's proposal, that the Court of Chancery should in matters of account adopt the practice of the Ecclesiastical Court, where matters are referred to the registrar, assisted by mercantile characters, who sit once and continuously till they make their report? The registrar stands in the place of the master, and, therefore, that is no improvement; and mercantile men could, of course, readily be found to sit with a master upon all the accounts of all the trust estates in the kingdom, once and continuously, till they made their report; of course in the character of assistant masters, but without emolument. Kind heaven protect us from a jurisdiction so constituted! When accounts are referred to arbitration, experience has shown that nothing is ever saved in point of time, and the parties are invariably dissatisfied with the decision of a domestic forum, although they may have agreed to the reference.

It is said to be allowed, that, *under some circumstances*, it may cost 1,500 *l.* to recover 3,000*l.* in equity. Indeed! It is no doubt to be lamented, that in many complicated cases the expenses do not bear any proportion to the value of the property, so that it may cost a large sum to recover in one case a small property, and in another but a small sum to recover a large property. How can this be avoided? In a late case at law a new trial was granted upon the applicant's paying the costs of the former trial, and the costs came to 3,000*l.*

The prison of the Fleet is said to contain within its walls many victims of the Court of Chancery, but in such cases the court has *no jurisdiction* to release them. Why do not they, who desire to relieve such persons, bring a bill into parliament to alter the law. Some of such persons undoubtedly are victims of their own obstinacy. I recollect four or five years ago a man being brought from the Fleet into court to put in his answer to a bill filed against him, but which he refused to do. Two or three barristers, not concerned in the cause, of whom

I happened to be one, took the man into a private room, offered to look into the case for him, and advised him to answer so as to prevent the necessity of his being sent back to prison, but he refused to do so, and said he would try a little further confinement at all events. Would you have released such a person from answering the claimant's case, or would you have decided against him without any answer?

I have thrown these observations hastily together, with a warm feeling of the indispensable necessity of upholding the jurisdiction of equity, and of not diminishing the reverence of the people for the administration of justice in that court; and if they shall operate to make you hesitate in the attacks which you so strongly make against the court, and which must lessen its authority, and the value of its decisions in the eyes of the country, my labour will not have been thrown away. At the same time I should at all times be ready to concur, if my concurrence were necessary, to the extent of my ability, in remedying all abuses which have in the current of time crept into the administration of justice,

whether in law or equity ; and I do trust, that, in future, invective will give place to argument, and that they who attack the wisdom of the law will condescend, first, to show in what particulars they object to the law as it stands ; and, secondly, what improvement they suggest.

I am, Sir,

Your faithful obedient servant,

EDWARD B. SUGDEN.

Lincoln's-Inn,
2d June, 1825.

Luke Hansard & Sons,
near Lincoln's-Inn-Fields.